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LSI CORPORATION and
AGERE SYSTEMS LLC

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

BARNES & NOBLE, INC. and
BARNESANDNOBLE.COM LLC,

Plaintiffs,

v.

LSI CORPORATION and
AGERE SYSTEMS LLC,

Defendants.

Case No.: 11-CV-02709 EMC

**DEFENDANTS LSI CORPORATION AND
AGERE SYSTEMS LLC'S FIRST
AMENDED COUNTERCLAIMS**

The Hon. Edward M. Chen

JURY TRIAL DEMANDED

I. COUNTERCLAIMS

LSI Corporation ("LSI") and Agere Systems LLC ("Agere," and collectively with LSI, "Counterclaimants") assert the following counterclaims against Barnes & Noble, Inc. ("Barnes & Noble") and Barnesandnoble.com LLC ("Barnesandnoble.com," and collectively with Barnes & Noble, "Counterclaim Defendants"):

THE NATURE OF THE ACTION

This is a civil action for infringement of U.S. Patent No. 5,546,420 (the “’420 patent”), entitled “Methods of and Devices for Enhancing Communications that Use Spread Spectrum Technology by Using Variable Power Techniques”; U.S. Patent No. 5,670,730 (the “’730 patent”), entitled “Data Protocol and Method for Segmenting Memory for a Music Chip”; U.S. Patent No. 5,920,552 (the “’552 patent”), entitled “Variable Rate Coding for Wireless Applications”; U.S. Patent No. 6,452,958 (the “’958 patent”), entitled “Digital Modulation System Using Extended Code Set”; U.S. Patent No. 6,707,867 (the “’867 patent”), entitled “Wireless Local Area Network Apparatus”; U.S. Patent No. 8,041,394 (the “’394 patent”), entitled “Methods and Systems for Transmitting an Information Signal in a Multiple Antenna Communication System”; U.S. Patent No. 5,870,087 (the “’087 patent”), entitled “MPEG Decoder System and Method Having a Unified Memory for Transport Decode and System Controller Functions”; U.S. Patent No. 5,568,167 (the “’167 patent”), entitled “System for Providing Antialiased Video Overlays”; U.S. Patent No. 6,982,663 (the “’663 patent”), entitled “Method and System for Symbol Binarization”; and U.S. Patent No. 5,452,006 (the “’006 patent”), entitled “Two-Part Synchronization Scheme for Digital Video Decoders.”

JURISDICTION AND VENUE

1. This action arises under the patent laws of the United States, Title 35 of the United States Code. This Court has subject matter jurisdiction over the claims asserted herein under 28 U.S.C. §§ 1331, 1338(a).

2. Counterclaim Defendants filed their original and amended complaints for declaratory judgment in this Court.

3. On information and belief, Counterclaim Defendants promote, market, offer for sale, sell, or import products and/or services that directly or indirectly infringe the patents-in-suit within the Northern District of California.

4. Venue is proper in this district pursuant to 28 U.S.C. § 1391 and 1400(b). Counterclaimants reserve the right to object to this forum as inconvenient under 28 U.S.C. § 1404.

PARTIES

5. Counterclaimant LSI is a Delaware corporation with its headquarters and principal place of business at 1621 Barber Lane, Milpitas, California 95035. LSI is a leading provider of silicon and software technologies, offering a broad portfolio of services including integrated circuits, adapters, and software. LSI has offices and carries out significant operations in Milpitas, California. LSI is the assignee of and owns all rights to the '087, '167, '663 and '006 patents.

6. Counterclaimant Agere is a Delaware limited liability company with its principal place of business at 1110 American Parkway, N.E., Allentown, Pennsylvania 18109. Agere is the wholly owned subsidiary of LSI. Agere is the assignee of and owns all rights to the '730, '420, '552, '867, '958 and '394 patents.

7. Counterclaim Defendant Barnesandnoble.com is a Delaware corporation with headquarters and principal place of business in New York, New York. Barnesandnoble.com offers for sale, sells and distributes electronic book reader hardware (such as the various versions of the "NOOK™"), Barnes & Noble software, and digital content via the Internet, for example, through an eCommerce site accessible via the barnesandnoble.com domain. On information and belief, Barnesandnoble.com is a wholly-owned subsidiary of NOOK Media LLC, an affiliate of Barnes & Noble.

8. On information and belief, Fictionwise LLC ("Fictionwise"), formerly Fictionwise, Inc., is a wholly-owned subsidiary of Barnes & Noble, and, prior to December 2012, operated independently from Barnes & Noble and Barnesandnoble.com. Fictionwise operates eCommerce sites, such as www.fictionwise.com, through which it sells or has sold digital content including audio books. After 2012, Fictionwise eCommerce sites direct users to www.barnesandnoble.com.

9. Counterclaim Defendant Barnes & Noble is a Delaware corporation with headquarters and principal place of business in New York, New York. On information and belief, Barnes & Noble owns and operates a network of retail stores that offers for sale and sells electronic book reader hardware (such as the various versions of the NOOK™), offers an in-store wireless system for its customers, and sells books, magazines, and related products. On

information and belief, Barnes & Noble is a majority shareholder in NOOK Media LLC, parent company of Barnesandnoble.com

FIRST COUNTERCLAIM

(Infringement of U.S. Patent No. 5,670,730)

10. Counterclaimants incorporate by reference paragraphs 1 through 9 above as if fully set forth herein.

11. Agere has owned the '730 patent throughout the period of Counterclaim Defendants' infringing acts and currently owns the '730 patent. A copy of the '730 patent, entitled "Data Protocol and Method for Segmenting Memory for a Music Chip" is attached hereto as **Exhibit A**.

12. Agere has provided notice of the '730 patent to Counterclaim Defendants through at least filing and service of its complaint in the Eastern District of Pennsylvania, *Agere Systems Inc., et al. v. Barnes & Noble, Inc., et al.*, Civil Action No. 5:11-cv-04751-LS (E.D. Pa.) (the "Pennsylvania Action"), and by virtue of correspondence between the parties regarding the patents-in-suit between June 2010 and April 2011.

13. Barnes & Noble has been, is currently, and unless enjoined, will continue to infringe one or more claims of the '730 patent by making, using, offering to sell, and selling within the United States and/or importing into the United States audio player devices, such as the NOOK™, for storing and playing "MP3/ID3" encoded audio files.

14. Barnesandnoble.com has been, is currently, and unless enjoined, will continue to infringe one or more claims of the '730 patent by making, using, offering to sell, and selling within the United States and/or importing into the United States, audio player devices, such as the NOOK™, for storing and playing "MP3/ID3" encoded audio files.

15. Counterclaim Defendants and/or their affiliated entities such as Fictionwise have also, and unless enjoined, will continue to infringe one or more claims of the '730 patent by making, using, offering to sell and selling within the United States and/or importing into the United States MP3/ID3 encoded audio files, which are sold through their eCommerce websites, including without limitation www.barnesandnoble.com, www.fictionwise.com and other means.

1 16. Barnes & Noble has been, is currently, and unless enjoined, will continue to
2 actively induce and encourage infringement of the '730 patent. The '730 patent has been, is
3 currently, and will continue to be infringed within the United States, including within this district,
4 by at least Barnes & Noble's customers using MP3/ID3-encoded audio files provided by Barnes
5 & Noble and/or using audio players supporting the MP3/ID3 file format, such as the NOOK™.
6 Barnes & Noble actively encourages that infringement with specific intent to induce and
7 encourage such infringement or at a minimum with deliberate indifference to the known risk of
8 such infringement.

9 17. Barnesandnoble.com has been, is currently, and unless enjoined, will continue to
10 actively induce and encourage infringement of the '730 patent. The '730 patent has been, is
11 currently, and will continue to be infringed within the United States, including within this district,
12 by at least Barnesandnoble.com's customers using MP3/ID3-encoded audio files provided by
13 Barnesandnoble.com and/or using audio players supporting the MP3/ID3 file format, such as the
14 NOOK™. Barnesandnoble.com actively encourages that infringement with specific intent to
15 induce and encourage such infringement or at a minimum with deliberate indifference to the
16 known risk of such infringement.

17 18. Barnes & Noble has been, is currently, and unless enjoined, will continue to
18 contribute to the infringement of the '730 patent by making, using, offering to sell, and selling
19 within the United States and/or importing into the United States, one or more components of an
20 audio player system including MP3/ID3-encoded audio files and/or audio player devices that
21 constitute a material part of the invention recited in one or more claims of the '730 patent, that are
22 especially made or adapted for use in an infringement of the '730 patent, and that are not a staple
23 article or commodity of commerce suitable for substantial non-infringing use.

24 19. On information and belief, Barnesandnoble.com has been, is currently, and unless
25 enjoined, will continue to contribute to the infringement of the '730 patent by making, using,
26 offering to sell, and selling within the United States and/or importing into the United States, one
27 or more components of an audio player system including MP3/ID3-encoded audio files and/or
28 audio player devices that constitute a material part of the invention recited in one or more claims

1 of the '730 patent, that are especially made or adapted for use in an infringement of the '730
2 patent, and that are not a staple article or commodity of commerce suitable for substantial non-
3 infringing use.

4 20. Counterclaim Defendants' infringement is willful because Counterclaim
5 Defendants knew or should have known of the '730 patent and that their acts described above
6 would directly and/or indirectly infringe the '730 patent, but acted despite an objectively high
7 likelihood that such acts would infringe the patent. Moreover, Counterclaim Defendants continue
8 the infringing acts described above even after being informed in June 2010 of the existence and
9 their infringement of the '730 patent.

10 21. As a direct and proximate consequence of Counterclaim Defendants' infringement
11 and willful infringement of the '730 patent, Agere has suffered and will continue to suffer
12 irreparable injury and damages, in an amount not yet determined, for which Agere is entitled to
13 relief. Agere seeks damages and treble damages, as well as preliminary and permanent injunctive
14 relief against further infringement.

15 SECOND COUNTERCLAIM

16 (Infringement of U.S. Patent No. 5,546,420)

17 22. Counterclaimants incorporate by reference paragraphs 1 through 9 above as if fully
18 set forth herein.

19 23. Agere has owned the '420 patent throughout the period of Counterclaim
20 Defendants' infringing acts and currently owns the '420 patent. A copy of the '420 patent,
21 entitled "Methods of and Devices for Enhancing Communications That Use Spread Spectrum
22 Technology by Using Variable Code Techniques" is attached hereto as **Exhibit B**.

23 24. Agere has provided notice of the '420 patent to Counterclaim Defendants through
24 at least the filing and service of the Pennsylvania Action and by virtue of correspondence between
25 the parties regarding the patents-in-suit between June 2010 and April 2011.

26 25. Barnes & Noble has been, is currently, and unless enjoined, will continue to
27 infringe one or more claims of the '420 patent by making, using, offering to sell, and selling
28 within the United States and/or importing into the United States devices that provide connectivity

1 in compliance with the Third Generation Wideband Code Division Multiple Access (“3G W-
2 CDMA” or “3G”) cellular standards, such as the NOOK™. These devices embody and/or
3 practice one or more claims of the ’420 patent.

4 26. Barnesandnoble.com has been, is currently, and unless enjoined, will continue to
5 infringe one or more claims of the ’420 patent by making, using, offering to sell, and selling
6 within the United States and/or importing into the United States devices that provide connectivity
7 in compliance with the Third Generation Wideband Code Division Multiple Access (“3G W-
8 CDMA” or “3G”) cellular standards, such as the NOOK™. These devices embody and/or
9 practice one or more claims of the ’420 patent.

10 27. Barnes & Noble has been, is currently, and unless enjoined, will continue to
11 actively induce and encourage infringement of the ’420 patent. The ’420 patent has been, is
12 currently, and will continue to be infringed within the United States, including within this district,
13 by at least Barnes & Noble’s customers using the 3G connectivity capability of the NOOK™ or
14 other devices to access Barnes & Noble and Barnesandnoble.com’s content. Barnes & Noble
15 actively encourages that infringement with specific intent to induce and encourage such
16 infringement or at a minimum with deliberate indifference to the known risk of such
17 infringement.

18 28. Barnesandnoble.com has been, is currently, and unless enjoined, will continue to
19 actively induce and encourage infringement of the ’420 patent. The ’420 patent has been, is
20 currently, and will continue to be infringed within the United States, including within this district,
21 by at least Barnesandnoble.com’s customers using the 3G connectivity capability of the NOOK™
22 or other devices to access Barnes & Noble and Barnesandnoble.com’s content.
23 Barnesandnoble.com actively encourages that infringement with specific intent to induce and
24 encourage such infringement or at a minimum with deliberate indifference to the known risk of
25 such infringement.

26 29. Barnes & Noble has been, is currently, and unless enjoined, will continue to
27 contribute to the infringement of the ’420 patent by making, using, offering to sell, and selling
28 within the United States and/or importing into the United States, one or more components that

1 constitute a material part of the invention recited in one or more claims of the '420 patent, that are
2 especially made or adapted for use in an infringement of the '420 patent, and that are not a staple
3 article or commodity of commerce suitable for substantial non-infringing use.

4 30. Barnesandnoble.com has been, is currently, and unless enjoined, will continue to
5 contribute to the infringement of the '420 patent by making, using, offering to sell, and selling
6 within the United States and/or importing into the United States, one or more components that
7 constitute a material part of the invention recited in one or more claims of the '420 patent, that are
8 especially made or adapted for use in an infringement of the '420 patent, and that are not a staple
9 article or commodity of commerce suitable for substantial non-infringing use.

10 31. Counterclaim Defendants' infringement is willful because Counterclaim
11 Defendants knew or should have known of the '420 patent and that their acts described above
12 would directly and/or indirectly infringe the '420 patent, but acted despite an objectively high
13 likelihood that such acts would infringe the patent. Moreover, Counterclaim Defendants continue
14 the infringing acts described above even after being informed in June 2010 of the existence and
15 their infringement of the '420 patent.

16 32. As a direct and proximate consequence of Counterclaim Defendants' infringement
17 and willful infringement of the '420 patent, Agere has suffered and will continue to suffer
18 irreparable injury and damages, in an amount not yet determined, for which Agere is entitled to
19 relief. Agere seeks damages and treble damages, as well as preliminary and permanent injunctive
20 relief against further infringement.

21 **THIRD COUNTERCLAIM**

22 **(Infringement of U.S. Patent No. 5,920,552)**

23 33. Counterclaimants incorporate by reference paragraphs 1 through 9 above as if fully
24 set forth herein.

25 34. Agere has owned the '552 patent throughout the period of Counterclaim
26 Defendants' infringing acts and currently owns the '552 patent. A copy of the '552 patent,
27 entitled "Variable Rate Coding for Wireless Applications" is attached hereto as **Exhibit C**.

28 35. Agere has provided notice of the '552 patent to Counterclaim Defendants through

1 at least the filing and service of the Pennsylvania Action and by virtue of correspondence between
2 the parties regarding the patents-in-suit between June 2010 and April 2011.

3 36. Barnes & Noble has been, is currently, and unless enjoined, will continue to
4 infringe one or more claims of the '552 patent by making, using, offering to sell, and selling
5 within the United States and/or importing into the United States devices that provide connectivity
6 in compliance with the Third Generation Wideband Code Division Multiple Access ("3G W-
7 CDMA" or "3G") cellular standards, such as the NOOK™. These devices embody and/or
8 practice one or more claims of the '552 patent.

9 37. Barnesandnoble.com has been, is currently, and unless enjoined, will continue to
10 infringe one or more claims of the '552 patent by making, using, offering to sell, and selling
11 within the United States and/or importing into the United States devices that provide connectivity
12 in compliance with the Third Generation Wideband Code Division Multiple Access ("3G W-
13 CDMA" or "3G") cellular standards, such as the NOOK™. These devices embody and/or
14 practice one or more claims of the '552 patent.

15 38. Barnes & Noble has been, is currently, and unless enjoined, will continue to
16 actively induce and encourage infringement of the '552 patent. The '552 patent has been, is
17 currently, and will continue to be infringed within the United States, including within this district,
18 by Barnes & Noble's customers using the 3G connectivity capability of the NOOK™ or other
19 devices to access Barnes & Noble and Barnesandnoble.com's content. Barnes & Noble actively
20 encourages that infringement with specific intent to induce and encourage such infringement or at
21 a minimum with deliberate indifference to the known risk of such infringement.

22 39. Barnesandnoble.com has been, is currently, and unless enjoined, will continue to
23 actively induce and encourage infringement of the '552 patent. The '552 patent has been, is
24 currently, and will continue to be infringed within the United States, including within this district,
25 by Barnesandnoble.com's customers using the 3G connectivity capability of the NOOK™ or
26 other devices to access Barnes & Noble and Barnesandnoble.com's content.

27 Barnesandnoble.com actively encourages that infringement with specific intent to induce and
28 encourage such infringement or at a minimum with deliberate indifference to the known risk of

1 such infringement.

2 40. Barnes & Noble has been, is currently, and unless enjoined, will continue to
3 contribute to the infringement of the '552 patent by making, using, offering to sell, and selling
4 within the United States and/or importing into the United States, one or more components that
5 constitute a material part of the invention recited in one or more claims of the '552 patent, that are
6 especially made or adapted for use in an infringement of the '552 patent, and that are not a staple
7 article or commodity of commerce suitable for substantial non-infringing use.

8 41. Barnesandnoble.com has been, is currently, and unless enjoined, will continue to
9 contribute to the infringement of the '552 patent by making, using, offering to sell, and selling
10 within the United States and/or importing into the United States, one or more components that
11 constitute a material part of the invention recited in one or more claims of the '552 patent, that are
12 especially made or adapted for use in an infringement of the '552 patent, and that are not a staple
13 article or commodity of commerce suitable for substantial non-infringing use.

14 42. Counterclaim Defendants' infringement is willful because Counterclaim
15 Defendants knew or should have known of the '552 patent and that their acts described above
16 would directly and/or indirectly infringe the '552 patent, but acted despite an objectively high
17 likelihood that such acts would infringe the patent. Moreover, Counterclaim Defendants continue
18 the infringing acts described above even after being informed in June 2010 of the existence and
19 their infringement of the '552 patent.

20 43. As a direct and proximate consequence of Counterclaim Defendants' infringement
21 and willful infringement of the '552 patent, Agere has suffered and will continue to suffer
22 irreparable injury and damages, in an amount not yet determined, for which Agere is entitled to
23 relief. Agere seeks damages and treble damages, as well as preliminary and permanent injunctive
24 relief against further infringement.

25 **FOURTH COUNTERCLAIM**

26 **(Infringement of U.S. Patent No. 6,707,867)**

27 44. Counterclaimants incorporate by reference paragraphs 1 through 9 above as if fully
28 set forth herein.

1 45. Agere has owned the '867 patent throughout the period of Counterclaim
2 Defendants' infringing acts and currently owns the '867 patent. A copy of the '867 patent,
3 entitled "Wireless Local Area Network Apparatus" is attached hereto as **Exhibit D**.

4 46. Agere has provided notice of the '867 patent to Counterclaim Defendants through
5 at least the filing and service of the Pennsylvania Action and by virtue of correspondence between
6 the parties regarding the patents-in-suit between June 2010 and April 2011.

7 47. Barnes & Noble has been, is currently, and unless enjoined, will continue to
8 infringe one or more claims of the '867 patent by making, using, offering to sell, and selling
9 within the United States and/or importing into the United States devices that provide wireless
10 connectivity capability in compliance with the Institute of Electrical and Electronics Engineers
11 ("IEEE") 802.11 wireless standards, such as Barnes & Noble's in-store wireless network and/or
12 the NOOK™ or other devices. These devices embody and/or practice one or more claims of the
13 '867 patent.

14 48. Barnesandnoble.com has been, is currently, and unless enjoined, will continue to
15 infringe one or more claims of the '867 patent by making, using, offering to sell, and selling
16 within the United States and/or importing into the United States devices that provide wireless
17 connectivity capability in compliance with the Institute of Electrical and Electronics Engineers
18 ("IEEE") 802.11 wireless standards, such as the NOOK™ or other devices. These devices
19 embody and/or practice one or more claims of the '867 patent.

20 49. Barnes & Noble has been, is currently, and unless enjoined, will continue to
21 actively induce and encourage infringement of the '867 patent. The '867 patent has been, is
22 currently, and will continue to be infringed within the United States, including within this district,
23 by Barnes & Noble's customers using devices that provide wireless connectivity such as Barnes
24 & Noble's in-store wireless network and/or the NOOK™ or other devices to access Barnes &
25 Noble and Barnesandnoble.com's content. Barnes & Noble actively encourages that infringement
26 with specific intent to induce and encourage such infringement or at a minimum with deliberate
27 indifference to the known risk of such infringement.

28 50. Barnesandnoble.com has been, is currently, and unless enjoined, will continue to

1 actively induce and encourage infringement of the '867 patent. On information and belief, the
2 '867 patent has been, is currently, and will continue to be directly infringed within the United
3 States, including within this district, by Barnesandnoble.com's customers using devices that
4 provide wireless connectivity such as Barnes & Noble's in-store wireless network and/or the
5 NOOK™ or other devices to access Barnes & Noble and Barnesandnoble.com's content.
6 Barnesandnoble.com actively encourages that infringement with specific intent to induce and
7 encourage such infringement or at a minimum with deliberate indifference to the known risk of
8 such infringement.

9 51. Barnes & Noble has been, is currently, and unless enjoined, will continue to
10 contribute to the infringement of the '867 patent by making, using, offering to sell, and selling
11 within the United States and/or importing into the United States, one or more components that
12 constitute a material part of the invention recited in one or more claims of the '867 patent, that are
13 especially made or adapted for use in an infringement of the '867 patent, and that are not a staple
14 article or commodity of commerce suitable for substantial non-infringing use.

15 52. Barnesandnoble.com has been, is currently, and unless enjoined, will continue to
16 contribute to the infringement of the '867 patent by making, using, offering to sell, and selling
17 within the United States and/or importing into the United States, one or more components that
18 constitute a material part of the invention recited in one or more claims of the '867 patent, that are
19 especially made or adapted for use in an infringement of the '867 patent, and that are not a staple
20 article or commodity of commerce suitable for substantial non-infringing use.

21 53. Counterclaim Defendants' infringement is willful because Counterclaim
22 Defendants knew or should have known of the '867 patent and that their acts described above
23 would directly and/or indirectly infringe the '867 patent, but acted despite an objectively high
24 likelihood that such acts would infringe the patent. Moreover, Counterclaim Defendants continue
25 the infringing acts described above even after being informed in June 2010 of the existence and
26 their infringement of the '867 patent.

27 54. As a direct and proximate consequence of Counterclaim Defendants' infringement
28 and willful infringement of the '867 patent, Agere has suffered and will continue to suffer

1 irreparable injury and damages, in an amount not yet determined, for which Agere is entitled to
2 relief. Agere seeks damages and treble damages, as well as preliminary and permanent injunctive
3 relief against further infringement.

4 **FIFTH COUNTERCLAIM**

5 **(Infringement of U.S. Patent No. 6,452,958)**

6 55. Counterclaimants incorporate by reference paragraphs 1 through 9 above as if fully
7 set forth herein.

8 56. Agere has owned the '958 patent throughout the period of Counterclaim
9 Defendants' infringing acts and currently owns the '958 patent. A copy of the '958 patent,
10 entitled "Digital Modulation System Using Extended Code Set" is attached hereto as **Exhibit E**.

11 57. Agere has provided notice of the '958 patent to Counterclaim Defendants through
12 at least the filing and service of the Pennsylvania Action and by virtue of correspondence between
13 the parties regarding the patents-in-suit between June 2010 and April 2011.

14 58. Barnes & Noble has been, is currently, and unless enjoined, will continue to
15 infringe one or more claims of the '958 patent by making, using, offering to sell, and selling
16 within the United States and/or importing into the United States devices that provide wireless
17 connectivity such as Barnes & Noble's in-store wireless network and/or the NOOK™ or other
18 devices that embody or practice one or more claims of the '958 patent.

19 59. Barnesandnoble.com has been, is currently, and unless enjoined, will continue to
20 infringe one or more claims of the '958 patent by making, using, offering to sell, and selling
21 within the United States and/or importing into the United States devices that provide wireless
22 connectivity such as the NOOK™ or other devices that embody or practice one or more claims of
23 the '958 patent.

24 60. Barnes & Noble has been, is currently, and unless enjoined, will continue to
25 actively induce and encourage infringement of the '958 patent. The '958 patent has been, is
26 currently, and will continue to be directly infringed within the United States, including within this
27 district, by Barnes & Noble's customers using devices that provide wireless connectivity such as
28 Barnes & Noble's in-store wireless network and/or the NOOK™ or other devices to access

1 Barnes & Noble and Barnesandnoble.com's content. Barnes & Noble actively encourages that
2 infringement with specific intent to induce and encourage such infringement or at a minimum
3 with deliberate indifference to the known risk of such infringement.

4 61. Barnesandnoble.com has been, is currently, and unless enjoined, will continue to
5 actively induce and encourage infringement of the '958 patent. On information and belief, the
6 '958 patent has been, is currently, and will continue to be directly infringed within the United
7 States, including within this district, by Barnesandnoble.com's customers using devices that
8 provide wireless connectivity such as Barnes & Noble's in-store wireless network and/or the
9 NOOK™ or other devices to access Barnes & Noble and Barnesandnoble.com's content.
10 Barnesandnoble.com actively encourages that infringement with specific intent to induce and
11 encourage such infringement or at a minimum with deliberate indifference to the known risk of
12 such infringement.

13 62. Barnes & Noble has been, is currently, and unless enjoined, will continue to
14 contribute to the infringement of the '958 patent by making, using, offering to sell, and selling
15 within the United States and/or importing into the United States, one or more components that
16 constitute a material part of the invention recited in one or more claims of the '958 patent, that are
17 especially made or adapted for use in an infringement of the '958 patent, and that are not a staple
18 article or commodity of commerce suitable for substantial non-infringing use.

19 63. Barnesandnoble.com has been, is currently, and unless enjoined, will continue to
20 contribute to the infringement of the '958 patent by making, using, offering to sell, and selling
21 within the United States and/or importing into the United States, one or more components that
22 constitute a material part of the invention recited in one or more claims of the '958 patent, that are
23 especially made or adapted for use in an infringement of the '958 patent, and that are not a staple
24 article or commodity of commerce suitable for substantial non-infringing use.

25 64. Counterclaim Defendants' infringement is willful because Counterclaim
26 Defendants knew or should have known of the '958 patent and that their acts described above
27 would directly and/or indirectly infringe the '958 patent, but acted despite an objectively high
28 likelihood that such acts would infringe the patent. Moreover, Counterclaim Defendants continue

1 the infringing acts described above even after being informed in June 2010 of the existence and
2 their infringement of the '958 patent.

3 65. As a direct and proximate consequence of Counterclaim Defendants' infringement
4 and willful infringement of the '958 patent, Agere has suffered and will continue to suffer
5 irreparable injury and damages, in an amount not yet determined, for which Agere is entitled to
6 relief. Agere seeks damages and treble damages, as well as preliminary and permanent injunctive
7 relief against further infringement.

8 SIXTH COUNTERCLAIM

9 (Infringement of U.S. Patent No. 8,041,394)

10 66. Counterclaimants incorporate by reference paragraphs 1 through 9 above as if fully
11 set forth herein.

12 67. Agere has owned the '394 patent throughout the period of Counterclaim
13 Defendants' infringing acts and currently owns the '394 patent. A copy of the '394 patent,
14 entitled "Methods and Systems for Transmitting an Information Signal in a Multiple Antenna
15 Communication System" is attached hereto as Exhibit F.

16 68. Agere has provided notice of the '394 patent to Counterclaim Defendants at least
17 by filing and service of these amended counterclaims and the related motion to amend filed in this
18 action on April 10, 2013.

19 69. Barnes & Noble has been, is currently, and unless enjoined, will continue to
20 infringe the '394 patent by making, using, offering to sell, and selling within the United States
21 and/or importing into the United States devices that provide wireless connectivity such as Barnes
22 & Noble's in-store wireless network and/or the NOOK™ or other devices that embody the
23 methods claimed in the '394 patent.

24 70. Barnesandnoble.com has been, is currently, and unless enjoined, will continue to
25 infringe the '394 patent by making, using, offering to sell, and selling within the United States
26 and/or importing into the United States devices that provide wireless connectivity such as the
27 NOOK™ or other devices that embody the methods claimed in the '394 patent.

28 71. Barnes & Noble has been, is currently, and unless enjoined, will continue to

1 actively induce and encourage infringement of the '394 patent. The '394 patent has been, is
2 currently, and will continue to be directly infringed within the United States, including within this
3 district, by at least Barnes & Noble's customers using devices providing wireless connectivity
4 such as the NOOKTM or other devices. Barnes & Noble actively encourages that infringement
5 with specific intent to induce and encourage such infringement or at a minimum with deliberate
6 indifference to the known risk of such infringement.

7 72. Barnesandnoble.com has been, is currently, and unless enjoined, will continue to
8 actively induce and encourage infringement of the '394 patent. The '394 patent has been, is
9 currently, and will continue to be directly infringed within the United States, including within this
10 district, by at least Barnesandnoble.com customers devices providing wireless connectivity such
11 as the NOOKTM or other devices. Barnesandnoble.com actively encourages that infringement
12 with specific intent to induce and encourage such infringement or at a minimum with deliberate
13 indifference to the known risk of such infringement.

14 73. Barnes & Noble has been, is currently, and unless enjoined, will continue to
15 contribute to the infringement of the '394 patent by making, using, offering to sell, and selling
16 within the United States and/or importing into the United States, one or more components of
17 wireless devices that are especially made or adapted for use in infringement of the '394 patent,
18 and that are not a staple article or commodity of commerce suitable for substantial non-infringing
19 use.

20 74. Barnesandnoble.com has been, is currently, and unless enjoined, will continue to
21 contribute to the infringement of the '394 patent by making, using, offering to sell, and selling
22 within the United States and/or importing into the United States, one or more components of
23 wireless devices that are especially made or adapted for use in an infringement of the '394 patent,
24 and that are not a staple article or commodity of commerce suitable for substantial non-infringing
25 use.

26 75. Counterclaim Defendants' infringement is willful because Counterclaim
27 Defendants knew or should have known of the '394 patent and that their acts described above
28 would directly or indirectly infringe the '394 patent, but acted despite an objectively high

1 likelihood that such acts would infringe the patent. Further, since Counterclaim Defendants have
2 notice of the '394 patent at least by virtue of the instant litigation, any continuing infringement
3 will be intentional and willful.

4 76. As a direct and proximate consequence of Counterclaim Defendants' willful
5 infringement of the '394 patent, Agere has suffered and will continue to suffer irreparable injury
6 and damages, in an amount not yet determined, for which Agere is entitled to relief. Agere seeks
7 damages and treble damages, as well as preliminary and permanent injunctive relief against
8 further infringement.

9 SEVENTH COUNTERCLAIM

10 (Infringement of U.S. Patent No. 5,870,087)

11 77. Counterclaimants incorporate by reference paragraphs 1 through 9 above as if fully
12 set forth herein.

13 78. LSI has owned the '087 patent throughout the period of Counterclaim Defendants'
14 infringing acts and currently owns the '087 patent. A copy of the '087 patent, entitled "MPEG
15 Decoder System and Method Having a Unified Memory for Transport Decode and System
16 Controller Functions" is attached hereto as **Exhibit G**.

17 79. LSI has provided notice of the '087 patent to Counterclaim Defendants at least by
18 filing and service of these amended counterclaims and the related motion to amend filed in this
19 action on April 10, 2013.

20 80. Barnes & Noble has been, is currently, and unless enjoined, will continue to
21 infringe the '087 patent by making, using, offering to sell, and selling within the United States
22 and/or importing into the United States devices capable of video decoding that embody the
23 methods claimed in the '087 patent, such as the NOOKTM or other devices.

24 81. Barnesandnoble.com has been, is currently, and unless enjoined, will continue to
25 infringe the '087 patent by making, using, offering to sell, and selling within the United States
26 and/or importing into the United States devices capable of video decoding that embody the
27 methods claimed in the '087 patent, such as the NOOKTM or other devices.

28 82. Barnes & Noble has been, is currently, and unless enjoined, will continue to

1 actively induce and encourage infringement of the '087 patent. The '087 patent has been, is
2 currently, and will continue to be directly infringed within the United States, including within this
3 district, by at least Barnes & Noble's customers using the video decoding capability in devices,
4 such as the NOOKTM or other devices. Barnes & Noble actively encourages that infringement
5 with specific intent to induce and encourage such infringement or at a minimum with deliberate
6 indifference to the known risk of such infringement.

7 83. Barnesandnoble.com has been, is currently, and unless enjoined, will continue to
8 actively induce and encourage infringement of the '087 patent. The '087 patent has been, is
9 currently, and will continue to be directly infringed within the United States, including within this
10 district, by at least Barnesandnoble.com customers using the video decoding capability in devices,
11 such as the NOOKTM or other devices. Barnesandnoble.com actively encourages that
12 infringement with specific intent to induce and encourage such infringement or at a minimum
13 with deliberate indifference to the known risk of such infringement.

14 84. Barnes & Noble has been, is currently, and unless enjoined, will continue to
15 contribute to the infringement of the '087 patent by making, using, offering to sell, and selling
16 within the United States and/or importing into the United States, one or more components of
17 devices with video decoding capability that are especially made or adapted for use in an
18 infringement of the '087 patent, and that are not a staple article or commodity of commerce
19 suitable for substantial non-infringing use.

20 85. Barnesandnoble.com has been, is currently, and unless enjoined, will continue to
21 contribute to the infringement of the '087 patent by making, using, offering to sell, and selling
22 within the United States and/or importing into the United States, one or more components of
23 devices with video decoding capability that are especially made or adapted for use in an
24 infringement of the '087 patent, and that are not a staple article or commodity of commerce
25 suitable for substantial non-infringing use.

26 86. Counterclaim Defendants' infringement is willful because Counterclaim
27 Defendants knew or should have known of the '087 patent and that their acts described above
28 would directly or indirectly infringe the '087 patent, but acted despite an objectively high

1 likelihood that such acts would infringe the patent. Further, since Counterclaim Defendants have
 2 notice of the '087 patent at least by virtue of the instant litigation, any continuing infringement
 3 will be intentional and willful.

4 87. As a direct and proximate consequence of Counterclaim Defendants' willful,
 5 infringement of the '087 patent, LSI has suffered and will continue to suffer irreparable injury
 6 and damages, in an amount not yet determined, for which LSI is entitled to relief. LSI seeks
 7 damages and treble damages, as well as preliminary and permanent injunctive relief against
 8 further infringement.

9 **EIGHTH COUNTERCLAIM**

10 **(Infringement of U.S. Patent No. 5,568,167)**

11 88. Counterclaimants incorporate by reference paragraphs 1 through 9 above as if fully
 12 set forth herein.

13 89. LSI has owned the '167 patent throughout the period of Counterclaim Defendants'
 14 infringing acts and currently owns the '167 patent. A copy of the '167 patent, entitled "System
 15 for Providing Antialiased Video Overlays" is attached hereto as **Exhibit H**.

16 90. LSI has provided notice of the '167 patent to Counterclaim Defendants at least by
 17 filing and service of these amended counterclaims and the related motion to amend filed in this
 18 action on April 10, 2013.

19 91. Barnes & Noble has been, is currently, and unless enjoined, will continue to
 20 infringe the '167 patent by making, using, offering to sell, and selling within the United States
 21 and/or importing into the United States devices with closed captioning/subtitling capability that
 22 embody the methods claimed in the '167 patent.

23 92. Barnesandnoble.com has been, is currently, and unless enjoined, will continue to
 24 infringe the '167 patent by making, using, offering to sell, and selling within the United States
 25 and/or importing into the United States devices with closed captioning/subtitling capability that
 26 embody the methods claimed in the '167 patent.

27 93. Barnes & Noble has been, is currently, and unless enjoined, will continue to
 28 actively induce and encourage infringement of the '167 patent. The '167 patent has been, is

1 currently, and will continue to be directly infringed within the United States, including within this
2 district, by at least Barnes & Noble's customers using devices with closed captioning/subtitling
3 capability, such as the NOOK™ or other devices. Barnes & Noble actively encourages that
4 infringement with specific intent to induce and encourage such infringement or at a minimum
5 with deliberate indifference to the known risk of such infringement.

6 94. Barnesandnoble.com has been, is currently, and unless enjoined, will continue to
7 actively induce and encourage infringement of the '167 patent. The '167 patent has been, is
8 currently, and will continue to be directly infringed within the United States, including within this
9 district, by at least Barnesandnoble.com customers using devices with closed
10 captioning/subtitling capability, such as the NOOK™ or other devices. Barnesandnoble.com
11 actively encourages that infringement with specific intent to induce and encourage such
12 infringement or at a minimum with deliberate indifference to the known risk of such
13 infringement.

14 95. Barnes & Noble has been, is currently, and unless enjoined, will continue to
15 contribute to the infringement of the '167 patent by making, using, offering to sell, and selling
16 within the United States and/or importing into the United States, one or more components that are
17 especially made or adapted for use in an infringement of the '167 patent, and that are not a staple
18 article or commodity of commerce suitable for substantial non-infringing use.

19 96. Barnesandnoble.com has been, is currently, and unless enjoined, will continue to
20 contribute to the infringement of the '167 patent by making, using, offering to sell, and selling
21 within the United States and/or importing into the United States, one or more components that are
22 especially made or adapted for use in an infringement of the '167 patent, and that are not a staple
23 article or commodity of commerce suitable for substantial non-infringing use.

24 97. Counterclaim Defendants' infringement is willful because Counterclaim
25 Defendants knew or should have known of the '167 patent and that their acts described above
26 would directly or indirectly infringe the '167 patent, but acted despite an objectively high
27 likelihood that such acts would infringe the patent. Further, since Counterclaim Defendants have
28 notice of the '167 patent at least by virtue of the instant litigation, any continuing infringement

1 will be intentional and willful.

2 98. As a direct and proximate consequence of Counterclaim Defendants' willful,
3 infringement of the '167 patent, LSI has suffered and will continue to suffer irreparable injury
4 and damages, in an amount not yet determined, for which LSI is entitled to relief. LSI seeks
5 damages and treble damages, as well as preliminary and permanent injunctive relief against
6 further infringement.

7 **NINTH COUNTERCLAIM**

8 **(Infringement of U.S. Patent No. 6,982,663)**

9 99. Counterclaimants incorporate by reference paragraphs 1 through 9 above as if fully
10 set forth herein.

11 100. LSI has owned the '663 patent throughout the period of Counterclaim Defendants'
12 infringing acts and currently owns the '663 patent. A copy of the '663 patent, entitled "Method
13 and System for Symbol Binarization" is attached hereto as **Exhibit I**.

14 101. LSI has provided notice of the '663 patent to Counterclaim Defendants at least by
15 filing and service of these amended counterclaims and the related motion to amend filed in this
16 action on April 10, 2013.

17 102. Barnes & Noble has been, is currently, and unless enjoined, will continue to
18 infringe the '663 patent by making, using, offering to sell, and selling within the United States
19 and/or importing into the United States devices capable of decoding video using the methods
20 claimed in the '663 patent.

21 103. Barnesandnoble.com has been, is currently, and unless enjoined, will continue to
22 infringe the '663 patent by making, using, offering to sell, and selling within the United States
23 and/or importing into the United States devices capable of decoding video using the methods
24 claimed in the '663 patent.

25 104. Barnes & Noble has been, is currently, and unless enjoined, will continue to
26 actively induce and encourage infringement of the '663 patent. The '663 patent has been, is
27 currently, and will continue to be directly infringed within the United States, including within this
28 district, by Barnes & Noble's customers using devices capable of decoding video using the

1 methods claimed in the '663 patent. Barnes & Noble actively encourages that infringement with
2 specific intent to induce and encourage such infringement or at a minimum with deliberate
3 indifference to the known risk of such infringement.

4 105. Barnesandnoble.com has been, is currently, and unless enjoined, will continue to
5 actively induce and encourage infringement of the '663 patent. The '663 patent has been, is
6 currently, and will continue to be directly infringed within the United States, including within this
7 district, by Barnesandnoble.com's customers using devices capable of decoding video using the
8 methods claimed in the '663 patent. Barnesandnoble.com actively encourages that infringement
9 with specific intent to induce and encourage such infringement or at a minimum with deliberate
10 indifference to the known risk of such infringement.

11 106. Barnes & Noble has been, is currently, and unless enjoined, will continue to
12 contribute to the infringement of the '663 patent by making, using, offering to sell, and selling
13 within the United States and/or importing into the United States, one or more components that are
14 especially made or adapted for use in infringement of the '663 patent, and that are not a staple
15 article or commodity of commerce suitable for substantial non-infringing use.

16 107. Barnesandnoble.com has been, is currently, and unless enjoined, will continue to
17 contribute to the infringement of the '663 patent by making, using, offering to sell, and selling
18 within the United States and/or importing into the United States, one or more components that are
19 especially made or adapted for use in infringement of the '663 patent, and that are not a staple
20 article or commodity of commerce suitable for substantial non-infringing use.

21 108. Counterclaim Defendants' infringement is willful because Counterclaim
22 Defendants knew or should have known of the '663 patent and that their acts described above
23 would directly or indirectly infringe the '663 patent, but acted despite an objectively high
24 likelihood that such acts would infringe the patent. Further, since Counterclaim Defendants have
25 notice of the '663 patent at least by virtue of the instant litigation, any continuing infringement
26 will be intentional and willful.

27 109. As a direct and proximate consequence of Counterclaim Defendants' infringement
28 and willful infringement of the '663 patent, LSI has suffered and will continue to suffer

1 irreparable injury and damages, in an amount not yet determined, for which LSI is entitled to
2 relief. LSI seeks damages and treble damages, as well as preliminary and permanent injunctive
3 relief against further infringement.

4 **TENTH COUNTERCLAIM**

5 **(Infringement of U.S. Patent No. 5,452,006)**

6 110. Counterclaimants incorporate by reference paragraphs 1 through 9 above as if fully
7 set forth herein.

8 111. LSI has owned the '006 patent throughout the period of Counterclaim Defendants'
9 infringing acts and currently owns the '006 patent. A copy of the '006 patent, entitled "Two-Part
10 Synchronization Scheme for Digital Video Decoders" is attached hereto as **Exhibit J**.

11 112. LSI has provided notice of the '006 patent to Counterclaim Defendants at least by
12 filing and service of these amended counterclaims and the related motion to amend filed in this
13 action on April 10, 2013.

14 113. Barnes & Noble has been, is currently, and unless enjoined, will continue to
15 infringe the '006 patent by making, using, offering to sell, and selling within the United States
16 and/or importing into the United States devices capable of video decoding that embody the
17 methods claimed in the '006 patent.

18 114. Barnesandnoble.com has been, is currently, and unless enjoined, will continue to
19 infringe the '006 patent by making, using, offering to sell, and selling within the United States
20 and/or importing into the United States devices capable of video decoding that embody the
21 methods claimed in the '006 patent.

22 115. Barnes & Noble has been, is currently, and unless enjoined, will continue to
23 actively induce and encourage infringement of the '006 patent. The '006 patent has been, is
24 currently, and will continue to be directly infringed within the United States, including within this
25 district, by at least Barnes & Noble's customers using the video decoding capability in the
26 NOOK™ or other devices. Barnes & Noble actively encourages that infringement with specific
27 intent to induce and encourage such infringement or at a minimum with deliberate indifference to
28 the known risk of such infringement.

1 116. Barnesandnoble.com has been, is currently, and unless enjoined, will continue to
2 actively induce and encourage infringement of the '006 patent. The '006 patent has been, is
3 currently, and will continue to be directly infringed within the United States, including within this
4 district, by at least Barnesandnoble.com customers using the video decoding capability in the
5 NOOK™ or other devices. Barnesandnoble.com actively encourages that infringement with
6 specific intent to induce and encourage such infringement or at a minimum with deliberate
7 indifference to the known risk of such infringement.

8 117. Barnes & Noble has been, is currently, and unless enjoined, will continue to
9 contribute to the infringement of the '006 patent by making, using, offering to sell, and selling
10 within the United States and/or importing into the United States, one or more components of
11 devices capable of video decoding that are especially made or adapted for use in an infringement
12 of the '006 patent, and that are not a staple article or commodity of commerce suitable for
13 substantial non-infringing use.

14 118. Barnesandnoble.com has been, is currently, and unless enjoined, will continue to
15 contribute to the infringement of the '006 patent by making, using, offering to sell, and selling
16 within the United States and/or importing into the United States, one or more components of
17 devices capable of video decoding that are especially made or adapted for use in an infringement
18 of the '006 patent, and that are not a staple article or commodity of commerce suitable for
19 substantial non-infringing use.

20 119. Counterclaim Defendants' infringement is willful because Counterclaim
21 Defendants knew or should have known of the '006 patent and that their acts described above
22 would directly or indirectly infringe the '006 patent, but acted despite an objectively high
23 likelihood that such acts would infringe the patent. Further, since Counterclaim Defendants have
24 notice of the '006 patent at least by virtue of the instant litigation, any continuing infringement
25 will be intentional and willful.

26 120. As a direct and proximate consequence of Counterclaim Defendants' willful,
27 infringement of the '006 patent, LSI has suffered and will continue to suffer irreparable injury
28 and damages, in an amount not yet determined, for which LSI is entitled to relief. LSI seeks

1 damages and treble damages, as well as preliminary and permanent injunctive relief against
2 further infringement.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Counterclaimants Agere and LSI demand the following relief against
5 Counterclaim Defendants Barnes & Noble and Barnesandnoble.com:

- 6 a) entry of a judgment declaring that Counterclaim Defendants have infringed, directly
7 and indirectly, one or more claims of the '730 patent;
- 8 b) a preliminary and permanent injunction against the continuing infringement of the
9 '730 patent;
- 10 c) entry of a judgment declaring that Counterclaim Defendants have infringed, directly
11 and indirectly, one or more claims of the '420 patent;
- 12 d) a preliminary and permanent injunction against the continuing infringement of the
13 '420 patent;
- 14 e) entry of a judgment declaring that Counterclaim Defendants have infringed, directly
15 and indirectly, one or more claims of the '552 patent;
- 16 f) a preliminary and permanent injunction against the continuing infringement of the
17 '552 patent;
- 18 g) entry of a judgment declaring that Counterclaim Defendants have infringed, directly
19 and indirectly, one or more claims of the '867 patent;
- 20 h) a preliminary and permanent injunction against the continuing infringement of the
21 '867 patent;
- 22 i) entry of a judgment declaring that Counterclaim Defendants have infringed, directly
23 and indirectly, one or more claims of the '958 patent;
- 24 j) a preliminary and permanent injunction against the continuing infringement of the
25 '958 patent;
- 26 k) entry of a judgment declaring that Counterclaim Defendants have infringed, directly
27 and indirectly, one or more claims of the '087 patent;
- 28 l) a preliminary and permanent injunction against the continuing infringement of the

- 1 '087 patent;
- 2 m) entry of a judgment declaring that Counterclaim Defendants have infringed, directly
- 3 and indirectly, one or more claims of the '394 patent;
- 4 n) a preliminary and permanent injunction against the continuing infringement of the
- 5 '394 patent;
- 6 o) entry of a judgment declaring that Counterclaim Defendants have infringed, directly
- 7 and indirectly, one or more claims of the '167 patent;
- 8 p) a preliminary and permanent injunction against the continuing infringement of the
- 9 '167 patent;
- 10 q) entry of a judgment declaring that Counterclaim Defendants have infringed, directly
- 11 and indirectly, one or more claims of the '006 patent;
- 12 r) a preliminary and permanent injunction against the continuing infringement of the
- 13 '006 patent;
- 14 s) entry of a judgment declaring that Counterclaim Defendants have infringed, directly
- 15 and indirectly, one or more claims of the '663 patent;
- 16 t) a preliminary and permanent injunction against the continuing infringement of the
- 17 '663 patent;
- 18 u) damages to compensate Agere and LSI for Counterclaim Defendants' infringement,
- 19 pursuant to 35 U.S.C. § 284, said damages to be trebled because of Counterclaim
- 20 Defendants' willful infringement;
- 21 v) an accounting of all damages sustained by LSI and Agere as the result of
- 22 Counterclaim Defendants' infringement pursuant to 35 U.S.C. § 284;
- 23 w) an award of pre-judgment and post-judgment interest and costs to LSI and Agere;
- 24 x) an award of reasonable attorneys' fees pursuant to 35 U.S.C. § 285;
- 25 y) all costs of suit pursuant to 28 U.S.C. § 1920 and any other applicable statute; and
- 26 z) such other and further relief as the Court may deem just and fair.
- 27
- 28

DEMAND FOR JURY TRIAL

Agere and LSI demand trial by jury on all issues so triable, pursuant to Federal Rule of Civil Procedure 38.

Dated: May 20, 2013

FENWICK & WEST LLP

By: /s/ Virginia K. DeMarchi
Virginia K. DeMarchi

Attorneys for Defendants
LSI CORPORATION and
AGERE SYSTEMS LLC

FENWICK & WEST LLP
ATTORNEYS AT LAW
MOUNTAIN VIEW